

2005 SENATE BILL 429

1 **AN ACT** *to repeal* 449.05 (1) (d), 449.08 (2) (d), 449.13, 449.15, 449.17 (6), 449.18
2 (3) and (4), 449.18 (6) (intro.) and 449.18 (7); *to renumber* 449.03 (2); *to*
3 *renumber and amend* 449.05 (1) (intro.), 449.05 (1) (b), 449.05 (1) (c), 449.05
4 (2), 449.06 (2), 449.17 (3), 449.17 (4), 449.17 (7), 449.18 (1), 449.18 (2) (intro.),
5 449.18 (2) (a), 449.18 (2) (b), 449.18 (2) (c), 449.18 (4m), 449.18 (6) (a), 449.18
6 (6) (b) and 449.18 (6) (c); *to consolidate, renumber and amend* 449.08 (2)
7 (intro.) and (a); *to amend* 71.45 (4), 440.05 (intro.), 440.08 (2) (a) (intro.), 449.03
8 (title), 449.04 (1), 449.04 (2) (intro.), 449.04 (2) (a), 449.04 (2) (b), 449.04 (2) (c),
9 449.06 (1), 449.17 (2), 449.18 (5), 449.19, 961.39 (intro.), 961.39 (2) and 961.39
10 (3) (a); *to repeal and recreate* 449.06 (title); and *to create* 449.02 (3), 449.055
11 (2), 449.055 (5), 449.055 (6), 449.06 (2m), 449.17 (1), 449.17 (1m), 449.17 (8)
12 (title), 449.18 (1) (a), (b) and (c), 449.18 (2) (title), 449.18 (2) (e), 449.18 (6) (title)
13 and 449.18 (6) (am) (intro.) of the statutes; **relating to:** the regulation of

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1 optometrists, providing an exemption from emergency rule procedures, and
2 granting rule-making authority.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 71.45 (4) of the statutes is amended to read:

4 71.45 (4) NET BUSINESS LOSS CARRY-FORWARD. Insurers computing tax under this
5 subchapter may subtract from Wisconsin net income any Wisconsin net business loss
6 sustained in any of the next 15 preceding taxable years to the extent not offset by
7 Wisconsin net business income of any year between the loss year and the taxable year
8 for which an offset is claimed and computed without regard to sub. (2) (a) 8. and 9.
9 and this subsection and limited to the amount of net income, but no loss incurred for
10 a taxable year before taxable year 1987 by a nonprofit service plan of sickness care
11 under ch. 148, or dental care under s. 447.13 ~~or prepaid optometric service plans~~
12 ~~under s. 449.15~~ may be treated as a net business loss of the successor service insurer
13 under ch. 613 operating by virtue of s. 148.03, or 447.13 ~~or 449.15~~.

14 **SECTION 2.** 440.05 (intro.) of the statutes, as affected by 2005 Wisconsin Act 25,
15 is amended to read:

16 **440.05 Standard fees.** (intro.) The following standard fees apply to all initial
17 credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.11,
18 446.02 (2) (c), 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d):

19 **SECTION 3.** 440.08 (2) (a) (intro.) of the statutes is amended to read:

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1 440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04,
2 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d), the
3 renewal dates and renewal fees for credentials are as follows:

4 **SECTION 4.** 449.02 (3) of the statutes is created to read:

5 449.02 (3) This section does not apply to a person who practices optometry
6 under the supervision of an optometrist licensed under this chapter. The examining
7 board shall promulgate rules specifying the conditions for supervision required
8 under this subsection.

9 **SECTION 5.** 449.03 (title) of the statutes is amended to read:

10 **449.03** (title) ~~Rule making; enforcement~~ **Enforcement.**

11 **SECTION 6.** 449.03 (2) of the statutes is renumbered 449.03.

12 **SECTION 7.** 449.04 (1) of the statutes is amended to read:

13 449.04 (1) Licenses to engage in the practice of optometry shall be issued only
14 to persons who pass an examination approved or conducted by the examining board.
15 An applicant who qualifies under s. 449.05 (1) may take any examination approved
16 or administered by the examining board upon payment of the fee specified in s.
17 440.05 (1).

18 **SECTION 8.** 449.04 (2) (intro.) of the statutes is amended to read:

19 449.04 (2) (intro.) The examination shall ~~include a written and practical~~
20 ~~examination, shall~~ reasonably relate to the skills likely to be needed for an applicant
21 to practice optometry in this state at the time of examination and shall seek to
22 determine the applicant's preparedness to exercise such skills. ~~In regard to the~~
23 ~~written examination, the~~ The examination shall test knowledge regarding general
24 and ocular pharmacology as it relates to optometry with particular emphasis on the
25 use of topical ocular diagnostic pharmaceutical agents and therapeutic

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1 pharmaceutical agents, including the treatment of adverse reactions to such
2 pharmaceutical agents, and knowledge regarding the removal of foreign bodies from
3 an eye or from an appendage to the eye. The examination shall also test knowledge
4 of state laws and administrative rules regarding the practice of optometry. The
5 examining board may do any of the following:

6 **SECTION 9.** 449.04 (2) (a) of the statutes is amended to read:

7 449.04 (2) (a) Prepare, administer, and grade the examination;.

8 **SECTION 10.** 449.04 (2) (b) of the statutes is amended to read:

9 449.04 (2) (b) Approve in whole or in part an examination prepared,
10 administered, and graded by the national board of examiners in optometry; or
11 another examination provider approved by the examining board.

12 **SECTION 11.** 449.04 (2) (c) of the statutes is amended to read:

13 449.04 (2) (c) Approve and administer an examination prepared and graded by
14 or under the direction of the national board of examiners in optometry or another
15 examination provider approved by the examining board.

16 **SECTION 12.** 449.05 (1) (intro.) of the statutes is renumbered 449.05 (intro.) and
17 amended to read:

18 **449.05 ~~Qualification~~ Qualifications for examination.** (intro.) No person
19 shall be examined by the board unless all of the following are satisfied:

20 **SECTION 13.** 449.05 (1) (b) of the statutes is renumbered 449.05 (1m) and
21 amended to read:

22 449.05 (1m) ~~Unless he or she~~ The person presents proof satisfactory to the
23 examining board that, subject to ss. 111.321, 111.322, and 111.335, he or she does not
24 have an arrest or conviction record;.

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1 **SECTION 14.** 449.05 (1) (c) of the statutes is renumbered 449.05 (2m) and
2 amended to read:

3 449.05 **(2m)** ~~Unless the~~ The person has graduated from an accredited college
4 of optometry approved and recognized by the examining board; ~~and.~~

5 **SECTION 15.** 449.05 (1) (d) of the statutes is repealed.

6 **SECTION 16.** 449.05 (2) of the statutes is renumbered 449.055 (intro.) and
7 amended to read:

8 **449.055 Endorsement.** (intro.) ~~Any~~ The examining board may issue a license
9 and certificate of registration to a person who is licensed in good standing to practice
10 optometry in another state, having that has substantially similar requirements and
11 ~~granting equal privileges to residents of Wisconsin, may be issued a certificate in the~~
12 ~~discretion of the examining board upon passing~~ if all of the following conditions are
13 satisfied:

14 (1) The person has passed an examination in pathology and practical
15 optometry, payment of.

16 (3) The person pays the fee specified in s. 440.05 (1) and ~~production of a~~
17 ~~certificate showing that the person has passed an examination in such other state~~
18 ~~and.~~

19 (4) The person submits satisfactory evidence that the person has actually
20 practiced there in the other state for 5 years.

21 **SECTION 17.** 449.055 (2) of the statutes is created to read:

22 449.055 **(2)** The person passes an examination that tests knowledge of state
23 and federal laws and administrative rules and regulations regarding the practice of
24 optometry.

25 **SECTION 18.** 449.055 (5) of the statutes is created to read:

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1 449.055 (5) The person satisfies the requirements under s. 449.05.

2 **SECTION 19.** 449.055 (6) of the statutes is created to read:

3 449.055 (6) The person has completed the study specified in ss. 449.17 (1m) (b)
4 and 449.18 (2) (a) 2. and passes the examinations specified in ss. 449.17 (1m) (c) and
5 449.18 (2) (a) 3.

6 **SECTION 20.** 449.06 (title) of the statutes is repealed and recreated to read:

7 **449.06 (title) Renewal; continuing education.**

8 **SECTION 21.** 449.06 (1) of the statutes is amended to read:

9 449.06 (1) Persons practicing optometry shall, on or before the applicable
10 renewal date specified under s. 440.08 (2) (a), register with the department and, pay
11 the applicable renewal fee specified under s. 440.08 (2) (a), and provide evidence
12 satisfactory to the examining board that he or she has complied with the rules
13 promulgated under sub. (2m).

14 **SECTION 22.** 449.06 (2) of the statutes is renumbered 449.065 and amended to
15 read:

16 **449.065 Display of registration.** Every practicing optometrist shall display
17 in a conspicuous place, at the entrance of his or her office, the name of the person so
18 practicing therein and shall keep the certificate of registration issued by the
19 examining board conspicuously displayed in that place of business so that it can
20 easily be seen and read.

21 **SECTION 23.** 449.06 (2m) of the statutes is created to read:

22 449.06 (2m) The examining board shall promulgate rules requiring a person
23 who is issued a license to practice optometry to complete, during the 2-year period
24 immediately preceding the renewal date specified in s. 440.08 (2) (a), not less than
25 30 hours of continuing education. The rules shall include requirements that apply

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1 only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical
2 agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents
3 or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.

4 **SECTION 24.** 449.08 (2) (intro.) and (a) of the statutes are consolidated,
5 renumbered 449.08 (2) and amended to read:

6 449.08 (2) Unprofessional advertising includes ~~without limitation because of~~
7 ~~enumeration:—(a)—~~Advertising advertising professional superiority or the
8 performance of professional services in a superior manner;.

9 **SECTION 25.** 449.08 (2) (d) of the statutes is repealed.

10 **SECTION 26.** 449.13 of the statutes is repealed.

11 **SECTION 27.** 449.15 of the statutes is repealed.

12 **SECTION 28.** 449.17 (1) of the statutes is created to read:

13 449.17 (1) APPLICABILITY. An optometrist may use topical ocular diagnostic
14 pharmaceutical agents only if the optometrist establishes a plan specified in sub. (2)
15 and if one of the following applies:

16 (a) The examining board initially issues a license to practice optometry to the
17 optometrist on or after the effective date of this paragraph [revisor inserts date].

18 (b) The department issued a certificate to the optometrist under s. 449.17, 2003
19 stats.

20 (c) The examining board issues a certificate under sub. (1m) to an optometrist
21 issued a license to practice optometry before the effective date of this paragraph
22 [revisor inserts date].

23 **SECTION 29.** 449.17 (1m) of the statutes is created to read:

24 449.17 (1m) LICENSES ISSUED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION
25 [REVISOR INSERTS DATE]. (a) The examining board shall certify an optometrist to use

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1 topical ocular diagnostic pharmaceutical agents if the optometrist was issued a
2 license to practice optometry before the effective date of this paragraph [revisor
3 inserts date], and the optometrist satisfies the education requirements under par. (b)
4 and successfully completes an examination under par. (c).

5 **SECTION 30.** 449.17 (2) of the statutes is amended to read:

6 449.17 (2) PLAN. Topical ocular diagnostic pharmaceutical agents may be used
7 only by optometrists who have established a plan approved by the secretary after
8 consultation with the examining board and the medical examining board for the
9 referral of patients who experience adverse reactions from the application of such
10 agents to appropriate medical services.

11 **SECTION 31.** 449.17 (3) of the statutes is renumbered 449.17 (1m) (c) and
12 amended to read:

13 449.17 (1m) (c) ~~Topical ocular diagnostic pharmaceutical agents may be used~~
14 ~~only by~~ The examining board may issue certificates under par. (a) only to
15 optometrists who successfully complete an examination approved or conducted by
16 the examining board on the subject of general and ocular pharmacology as it relates
17 to optometry with particular emphasis on the use of topical ocular diagnostic
18 pharmaceutical agents, including the treatment of any adverse reactions that may
19 ~~occur to such pharmaceutical agents.~~ The examination shall be prepared or
20 approved by the department ~~in consultation with the examining board, the medical~~
21 ~~examining board and the pharmacy examining board.~~ The department examining
22 board shall periodically review the validity, reliability, and appropriateness of the
23 examination. ~~In regard to the examination, the department~~ The examining board
24 may do any of the following:

- 25 1. Prepare, administer, and grade the examination;

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1 2. Approve in whole or in part an examination prepared, administered, and
2 graded by the national board of examiners in optometry ~~or by the optometry~~
3 ~~examining board~~; or another examination provider approved by the examining
4 board.

5 3. Approve and administer an examination prepared and graded by or under
6 the direction of the national board of examiners in optometry or another examination
7 provider approved by the examining board.

8 **SECTION 32.** 449.17 (4) of the statutes is renumbered 449.17 (1m) (b) and
9 amended to read:

10 449.17 **(1m)** (b) In addition to the requirements of ~~sub. (3), under par. (c), the~~
11 examining board may issue certificates under par. (a) only to optometrists who wish
12 ~~to use topical ocular diagnostic pharmaceutical agents shall successfully complete~~
13 60 classroom hours of study in general and ocular pharmacology as it relates to
14 optometry with particular emphasis on the use of topical ocular diagnostic
15 pharmaceutical agents. At least 30 of the 60 classroom hours of study shall be in
16 ocular pharmacology and shall emphasize the systemic effects of and reactions to
17 pharmaceutical agents, including the treatment of any adverse reactions that may
18 occur. The course of study shall be offered by an institution approved by the ~~secretary~~
19 examining board and accredited by a regional or professional accrediting
20 organization which is recognized by the ~~council on post-secondary accreditation and~~
21 ~~the U.S. office~~ Council for Higher Education Accreditation or its successor or the
22 federal department of education, and shall be completed prior to entering the
23 examination required by ~~sub. (3) under par. (c).~~

24 **SECTION 33.** 449.17 (6) of the statutes is repealed.

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1 **SECTION 34.** 449.17 (7) of the statutes is renumbered 449.17 (1m) (d) and
2 amended to read:

3 449.17 **(1m)** (d) No fee may be charged for a certificate issued under this section
4 subsection. A certificate issued under this ~~section~~ subsection or s. 449.17, 2003
5 stats. remains in effect while the optometrist's license to practice optometry remains
6 in effect unless the certificate is suspended or revoked by the department examining
7 board.

8 **SECTION 35.** 449.17 (8) (title) of the statutes is created to read:

9 449.17 **(8)** (title) REIMBURSEMENT PROHIBITED.

10 **SECTION 36.** 449.18 (1) of the statutes is renumbered 449.18 (1) (intro.) and
11 amended to read:

12 449.18 **(1)** APPLICABILITY. (intro.) No optometrist may use therapeutic
13 pharmaceutical agents or remove foreign bodies from an eye or from an appendage
14 to the eye unless ~~the optometrist is certified by the examining board under this~~
15 ~~section.~~ one of the following applies:

16 **SECTION 37.** 449.18 (1) (a), (b) and (c) of the statutes are created to read:

17 449.18 **(1)** (a) The examining board initially issues a license to practice
18 optometry to the optometrist on or after the effective date of this paragraph
19 [revisor inserts date].

20 (b) The department issued a certificate to the optometrist under s. 449.18, 2003
21 stats.

22 (c) The examining board issues a certificate under sub. (2) to an optometrist
23 issued a license to practice optometry before the effective date of this paragraph
24 [revisor inserts date].

25 **SECTION 38.** 449.18 (2) (title) of the statutes is created to read:

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1 449.18 (2) (title) LICENSES ISSUED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION
2 [REVISOR INSERTS DATE].

3 **SECTION 39.** 449.18 (2) (intro.) of the statutes is renumbered 449.18 (2) (a)
4 (intro.) and amended to read:

5 449.18 (2) (a) (intro.) The examining board shall certify an optometrist to use
6 therapeutic pharmaceutical agents and remove foreign bodies from an eye or from
7 an appendage to the eye if the optometrist was issued a license to practice optometry
8 before the effective date of this paragraph [revisor inserts date], and the
9 optometrist satisfies all of the following:

10 **SECTION 40.** 449.18 (2) (a) of the statutes is renumbered 449.18 (2) (a) 1. and
11 amended to read:

12 449.18 (2) (a) 1. The optometrist is certified under s. 449.17, 2003 stats., or s.
13 449.17 (1m) (a) to use topical ocular diagnostic pharmaceutical agents.

14 **SECTION 41.** 449.18 (2) (b) of the statutes is renumbered 449.18 (2) (a) 2. and
15 amended to read:

16 449.18 (2) (a) 2. The optometrist has successfully completed 100 hours of
17 approved study in the use of therapeutic pharmaceutical agents and the removal of
18 superficial foreign bodies from an eye or from an appendage to the eye. The course
19 of study shall be offered by an institution approved by the examining board and
20 accredited by a regional or professional accrediting organization that is recognized
21 by the ~~council on postsecondary accreditation of~~ Council for Higher Education
22 Accreditation or its successor or the federal department of education.

23 **SECTION 42.** 449.18 (2) (c) of the statutes is renumbered 449.18 (2) (a) 3. and
24 amended to read:

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1 449.18 (2) (a) 3. The optometrist has passed an examination ~~under sub. (3)~~
2 ~~conducted or approved by the examining board. The examining board shall~~
3 ~~periodically review the validity, reliability, and appropriateness of the examination~~
4 ~~that it conducts or approves under this subdivision.~~

5 **SECTION 43.** 449.18 (2) (e) of the statutes is created to read:

6 449.18 (2) (e) A certificate issued under par. (a) or s. 449.18, 2003 stats.,
7 remains in effect while the optometrist's license to practice optometry remains in
8 effect unless the certificate is suspended or revoked by the examining board.

9 **SECTION 44.** 449.18 (3) and (4) of the statutes are repealed.

10 **SECTION 45.** 449.18 (4m) of the statutes is renumbered 449.18 (2) (d) and
11 amended to read:

12 449.18 (2) (d) No fee may be charged for the issuance ~~or renewal~~ of a certificate
13 ~~under this section~~ par. (a).

14 **SECTION 46.** 449.18 (5) of the statutes is amended to read:

15 449.18 (5) REMOVALS FROM EYES. An optometrist who is ~~certified under this~~
16 ~~section~~ allowed under sub. (1) to remove a foreign body from an eye or from an
17 appendage to an eye may not remove a foreign body from an eye or from an
18 appendage to an eye if the foreign body is deeper than Bowman's layer of the cornea
19 or deeper than the conjunctiva.

20 **SECTION 47.** 449.18 (6) (title) of the statutes is created to read:

21 449.18 (6) (title) USE OF THERAPEUTIC PHARMACEUTICALS.

22 **SECTION 48.** 449.18 (6) (intro.) of the statutes is repealed.

23 **SECTION 49.** 449.18 (6) (a) of the statutes is renumbered 449.18 (6) (am) 1. and
24 amended to read:

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1 449.18 (6) (am) 1. ~~May not prescribe~~ Prescribe or administer any therapeutic
2 pharmaceutical agent that he or she is prohibited from prescribing or administering
3 under the rules promulgated under sub. ~~(8)~~ par. (cm).

4 **SECTION 50.** 449.18 (6) (am) (intro.) of the statutes is created to read:

5 449.18 (6) (am) An optometrist who is allowed under sub. (1) to use therapeutic
6 pharmaceutical agents may not do any of the following:

7 **SECTION 51.** 449.18 (6) (b) of the statutes is renumbered 449.18 (6) (bm), and
8 449.18 (6) (bm) (intro.) and 1., as renumbered, are amended to read:

9 449.18 (6) (bm) (intro.) ~~Shall~~ An optometrist who is allowed under sub. (1) to
10 use therapeutic pharmaceutical agents shall include with each prescription order all
11 of the following:

12 1. A statement that he or she is ~~certified under this section~~ allowed under sub.
13 (1) to use therapeutic pharmaceutical agents.

14 **SECTION 52.** 449.18 (6) (c) of the statutes is renumbered 449.18 (6) (am) 2. and
15 amended to read:

16 449.18 (6) (am) 2. ~~May not dispense~~ Dispense, as defined in s. 450.01 (7), other
17 than by prescribing or administering. This paragraph subdivision does not prohibit
18 the optometrist from providing a complimentary sample of a therapeutic
19 pharmaceutical agent to a patient to whom the optometrist has rendered therapeutic
20 care.

21 **SECTION 53.** 449.18 (7) of the statutes is repealed.

22 **SECTION 54.** 449.19 of the statutes is amended to read:

23 **449.19 Referral to other specialists health care professionals.** If, during
24 the course of examining a person, an optometrist determines the existence of a
25 pathological condition requiring treatment outside the scope of the practice of

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1 optometry, the optometrist shall so advise the person and shall refer the person to
2 an appropriate ~~medical specialist~~ health care professional, as defined in s. 180.1901
3 (1m), for further evaluation.

4 **SECTION 55.** 961.39 (intro.) of the statutes is amended to read:

5 **961.39 Limitations on optometrists.** (intro.) An optometrist who is ~~certified~~
6 allowed under s. 449.18 (1) to use therapeutic pharmaceutical agents:

7 **SECTION 56.** 961.39 (2) of the statutes is amended to read:

8 961.39 **(2)** May prescribe or administer only those controlled substances
9 included in schedules III, IV, and V that are permitted for prescription or
10 administration under the rules promulgated under s. 449.18 ~~(8)~~ (6) (cm).

11 **SECTION 57.** 961.39 (3) (a) of the statutes is amended to read:

12 961.39 **(3)** (a) A statement that he or she is ~~certified~~ allowed under s. 449.18
13 (1) to use therapeutic pharmaceutical agents.

14 **SECTION 58. Nonstatutory provisions.**

15 (1) APPROVALS TRANSITION. All approvals issued by the department of regulation
16 and licensing under section 449.17 (2) and (4), 2003 stats., that are in effect on the
17 effective date of this subsection remain in effect until their specified expiration date
18 or until modified or rescinded by the optometry examining board.

19 (2) PENDING MATTERS TRANSITION. Any matter pending with the department of
20 regulation and licensing on the effective date of this subsection that relates to an
21 approval under section 449.17 (2) or (4), 2003 stats., is transferred to the optometry
22 examining board and all materials submitted to or actions taken by the department
23 with respect to the pending matter are considered as having been submitted to or
24 taken by the board.

25 (3) CONTINUING EDUCATION RULES.

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1 (a) The optometry examining board shall submit in proposed form the rules
2 required under section 449.06 (2m) of the statutes, as created by this act, to the
3 legislative council staff under section 227.15 (1) of the statutes no later than the first
4 day of the 10th month beginning after the effective date of this paragraph.

5 (b) Using the procedure under section 227.24 of the statutes, the optometry
6 examining board may promulgate rules required under section 449.06 (2m) of the
7 statutes, as created by this act, for the period before the effective date of the rules
8 submitted under paragraph (a), but not to exceed the period authorized under section
9 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
10 and (3) of the statutes, the optometry examining board is not required to provide
11 evidence that promulgating a rule under this paragraph as an emergency rule is
12 necessary for the preservation of the public peace, health, safety, or welfare and is
13 not required to provide a finding of emergency for a rule promulgated under this
14 paragraph.

15 **SECTION 59. Initial applicability.**

16 (1) EXAMINATIONS. The treatment of section 449.04 (2) (intro.) of the statutes
17 first applies to examinations administered on the effective date of this subsection.

18 (2) ENDORSEMENT. The treatment of sections 449.05 (2) and 449.055 (2), (5), and
19 (6) of the statutes first applies to applications for licenses received on the effective
20 date of this subsection.

21 **SECTION 60. Effective date.**

22 (1) This act takes effect on the first day of the 4th month beginning after
23 publication.

24 (END)